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Money Had and Received -- Recovery by Hospital of Damages Paid for Medical Expense

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In two recent North Carolina and South Carolina cases, interesting divergence of opinion is apparent as to the scope of the action of money had and received. In the North Carolina case,[1] plaintiff hospital, in a suit against an infant for treatment of his injuries received in an accident, was allowed recovery not only in *quantum meruit* for necessaries, but for money had and received from a judgment against the original wrongdoer which included the hospital expense as an item of damage. The South Carolina court[2] held, on the other hand, that where an injured man had recovered damages from his tort-feasor in a suit in which he alleged hospital expenses as a material factor of his injury, the money so recovered was not impressed with a trust in favor of his physician.

Although the result reached by the North Carolina court is sound, it is submitted that this should have been based solely upon the infant's liability for necessaries supplied him,[3] and that the South Carolina court correctly held that there was no trust set up in favor of the physician. The doctrine of money had and received has been so loosely applied that it is difficult to determine just when the action will lie.[4] Generally, however, it would seem that the action should be allowed only where the plaintiff can show that money, rightfully his, has been paid to the defendant either expressly for the use of the plaintiff, or where it can be shown that the defendant has obtained the plaintiff's money through mistake of fact, fraud, or duress.[5]

[1] Cole v. Wagner, 197 N. C. 692, 150 S. E. 339 (1929).

[2] Traywick v. Wannamaker, 150 S. E. 655 (S. C. 1929).

[3] Richardson v. Strong, 35 N. C. 106 (1851); McAlpine v. Dzwonkiewicz, 231 Mich. 165, 203 N. W. 671 (1925) (the facts of this case square exactly with the North Carolina case under discussion. The court allowed a full recovery on the liability of the infant's estate for necessaries); Harris v. Crawley, 161 Mich. 383, 126 N. W. 421 (1910); O'Donnelly v. Kinley, 220 Mo. App. 284, 286 S. W. 140 (1926); Gibbs v. Poplar Bluff Light and Power Company, 142 Mo. App. 19, 125 S. W. 840 (1910); Note (1924) 32 A. L. R. 659. *Contra:* Hoyt v. Casey, 114 Mass. 397, 19 Am. Rep. 371 (1873); Wailing v. Toll, 9 Johns 141 (N. Y. 1812).

[4] Holt v. Markham, 92 L. J. K. B. 406, [1923] 1 K. B. 504. (In his opinion in this case Scrutton, L. J. says: "The whole history of this particular form of action (money had and received) has been what I may call a history of well meaning sloppiness of thought"); Hanbury, *The Recovery of Money* (1924) 40 LAW QUARTERLY REVIEW 31.

[5] Christie v. Durden, 205 Ala. 571, 88 So. 667 (1921); Dimmitt v. Johnson, 199 Iowa 966, 203 N. W. 261 (1925); Gloyd v. Hotel La Salle, 221 Ill. App. 104 (1921); Ambrose v. Graziani, 197 Ky. 679, 247 S. W. 953 (1923); Cutler v. Rand, 8 Cush. 89 (Mass. 1883); Bither v. Packard, 115 Me. 306, 98 Atl. 929

But the North Carolina case seems to be the first suggestion that an action for money had and received might be allowed when all plaintiff could show was a debt due him by the defendant and the receipt of money by the defendant from a third person that might have been used to discharge that debt. Obviously there was no question of mistake, fraud, or duress involved.

As to the remaining question, whether the money was paid to the defendant *for the plaintiff*, it seems clear that such was not the case despite the argument that since the present defendant as plaintiff in the prior case alleged hospital expense as an element of damage, he received that part of the damages for the plaintiff. The injured person in setting up hospital expenses in his suit against the tort-feasor did so merely for the purpose of enabling the jury to use this element, along with others such as suffering and impairment of earning capacity, in measuring the total compensation due him for his injuries,[6] and as the South Carolina court correctly held, not as an attempt to set himself up as trustee of a fund to the use of the hospital or physician. Nor did the tort-feasor have any interest or motive to require that any part of the money paid on the judgment be devoted to the payment of the hospital, for he was not liable to the hospital.

It would seem, therefore, that the effect of this part of the decision of the Supreme Court of North Carolina is to extend unnecessarily the application of the over-stretched doctrine[7] of money had and received.

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(1916); Reddingius v. Enkema, 156 Minn. 283. 194 N. W. 646 (1923); Smith v. Hicks, 1 Wend. 202 (N. Y. 1829); Gochenauer v. Gard, 3 Penr. & W. 274 (Pa. 1831); City of Norfolk v. Norfolk County, 129 Va. 356, 91 S. E. 820 (1917); Sinclair v. Brougham, 1914 A. C. 398; Banque Belge v. Hambrouck (1921) 1 K. B. 321; Skelly v. Solari, 9 M. & W. 54, 152 Eng. Rep. 24 (Ex. 1841); Marriott v. Hampton, 7 T. R. 269, 101 Eng. Rep. 969 (K. B. D. 1797); CHITTY'S PLEADING (16th American Edition) at page 365.

[6] Ledford v. The Valley River Lumber Company, 183 N. C. 614, 112 S. E. 421 (1922); SEDGWICK, ELEMENTS OF DAMAGES (2nd. ed. 1909) at pages 118 and 158.

[7] Rabinowitz v. People's National Bank, 235 Mass. 102, 126 N. E. 289 (1920) (holding that the right to recover in an action for money had and received depends upon the obligation to restore that which the law implies should be returned where one has been unjustly enriched at the expense of another). Where money is received to a debtors' own use not even a prior assignee can recover it in an action for money had and received.